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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

L.P.,

Petitioner,

v.

SAN FRANCISCO CITY AND COUNTY  
SUPERIOR COURT,

Respondent,

SAN FRANCISCO HUMAN SERVICES  
AGENCY et al.,

Real Parties in Interest.

A127033

(San Francisco City & County  
Super. Ct. Nos. JD-06-3483,  
JD-06-3483A, & JD-06-3483B)

L.P. (Mother) challenges an order of the San Francisco City and County Superior Court, Juvenile Division, made November 20, 2009, in which the court set a hearing under Welfare and Institutions Code section 366.26<sup>1</sup> to select a permanent plan for the minors T.A. (born March 1995), D.A. (born January 1999), and C.A. (born May 2000). Mother contends the juvenile court erred in failing to extend her reunification services so that she could complete an inpatient substance abuse treatment program. As discussed

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

below, we conclude there was no prejudicial error and deny Mother's petition on the merits.<sup>2</sup>

### **BACKGROUND**

The San Francisco Human Services Agency (Agency) initiated this proceeding on December 28, 2006. The amended jurisdictional allegations under section 300, subdivision (b), were that Mother had "an alcohol problem" that needed assessment and treatment, that she had failed to pick up the minors from school without making provisions for their care, that she had failed to "maintain the children's educational needs [and] attendance," that she had not cooperated with school district staff, "community resources, and [Agency] family service programs," and that the minors were former dependents of the court as to whom there had been "several previous . . . referrals" concerning Mother's failure to provide appropriate care. On March 21, 2007, the juvenile court sustained these allegations, directed that the three minors remain in Mother's custody, and ordered family maintenance services that called for Mother to complete, among other things, an alcohol abuse treatment program.

The juvenile court continued family maintenance services at status review hearings held on September 20, 2007, and March 20, 2008. (See § 364.) In a report submitted at the later of these hearings, the Agency noted Mother had completed an inpatient treatment program in early December 2007, but soon afterward relapsed into alcohol abuse and did not begin to address her relapse until mid-February 2008. By late August 2008, after Mother had received 17 months of family maintenance services, the Agency reported that she had "attempted to work on her requirements" and "follow through on her alcohol abuse treatment," despite the difficulties of foot surgery and the terminal illness and death of her mother. At that point, the Agency was recommending that the court dismiss the case at the next six-month review.

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<sup>2</sup> Section 366.26, subdivision (l)(1)(A), bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing for selection and implementation of a permanent plan. The statute also encourages the appellate court to determine all such writ petitions on their merits, as we do here. (§ 366.26, subd. (l)(4)(B).)

In October 2008, however, the Agency removed the minors from Mother's physical custody and filed a supplemental petition under section 387 alleging Mother had physically abused the minors. At this time, when asked about Mother, the youngest of the minors described her as "drunk" and a "crazy lady." The juvenile court formally detained the minors on October 10, 2008, and later that month the Agency placed the minors with a maternal aunt in Stockton, San Joaquin County. The Agency proposed reunification services for Mother that included completion of a residential or outpatient drug treatment program, parenting education, and individual therapy. On December 18, 2008, the court sustained the section 387 petition and ordered reunification services.

An Agency report completed in February 2009 noted Mother had so far participated only "minimally" in services, including an outpatient drug treatment program. She had also tested positive for alcohol use on the single drug test she had submitted during the review period. The juvenile court continued services and the out-of-home placement at a six-month status review hearing held March 19, 2009.

In late May 2009, the Agency filed an ex parte application seeking an order suspending further visitation until Mother demonstrated she was participating regularly in her alcohol treatment program and testing. The assigned social worker averred Mother had been drinking throughout a weekend visit to the maternal aunt's home in Stockton. The juvenile court granted the application on June 1, 2009.

In a report completed at the beginning of September 2009 and admitted at the 12-month permanency hearing (12-month hearing), the social worker noted Mother's history of alcohol abuse had resulted in referrals beginning in 2000. The minors were declared dependents of the court March 2001, but Mother reunited with them in July 2004 when, after "several attempts at residential treatment," she successfully completed such a program.<sup>3</sup>

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<sup>3</sup> Clearly, however, Mother had relapsed by the time the present case was instituted in December 2006. Further, an earlier Agency report, as noted above, showed that Mother completed a second inpatient treatment program in December 2007, but relapsed again very soon thereafter.

The social worker contacted a case manager at Lee Woodward—a provider of Mother’s therapy, parenting, and outpatient alcohol treatment services—in early September 2009. The case manager reported Mother had been “far from . . . compliant” with the requirements of her program. When asked whether additional reunification services would result in significant improvement, the case manager responded in the negative, stating Mother “ha[d] not given [her] a reason to believe she is serious about her treatment program.” In a subsequent letter, the case manager indicated Mother had been terminated from the treatment program in mid-September after missing numerous group and individual treatment sessions and exhibiting “[g]enerally poor behavior” in group sessions.

The social worker testified that he advised Mother at that point to enter an inpatient treatment program. After she refused to do so, he referred her to Iris Center—another outpatient treatment program. In a facsimile transmission received on the date scheduled for the 12-month hearing, a substance abuse counselor at Iris Center reported Mother had missed 11 treatment sessions since her enrollment at the beginning of October, and as late as the day before had admitted she was still drinking, after the counselor told her she could “smell the alcohol on [her].”

At the conclusion of the 12-month hearing, on November 20, 2009, the juvenile court concluded that a return of the minors to Mother’s custody would create a substantial risk of detriment to their safety, protection, and physical or emotional well-being. (See § 366.21, subd. (f).) It further found that the Agency had offered or provided Mother with reasonable reunification services, and that there was not a substantial probability that the minors could be returned to Mother and safely maintained in her home “within the maximum time allowed.” (See § 366.21, subd. (g)(1).) The court adopted the Agency’s recommendations, which were to terminate Mother’s services and set the matter for a hearing under section 366.26. Mother’s petition followed. (§ 366.26, subd. (I).)

## DISCUSSION

At the hearing, Mother's counsel cross-examined the social worker and elicited a concession that it was possible for Mother to "very nearly complete" a six-month residential alcohol treatment program if her services were extended for another five months to the 18-month limit—although the social worker indicated that this possibility assumed "an amazing change in behavior" on Mother's part. On the basis of this statement, Mother argues it was error for the juvenile court not to continue the matter to an 18-month permanency review hearing (18-month hearing) and to extend her services until then.

At the 12-month hearing, the juvenile court was authorized to continue the case for up to six months for an 18-month hearing, but only if it found there was a substantial probability that the minors would be returned to Mother's physical custody and safely maintained in the home within the extended period of time—in this case, a date less than five months after the conclusion of the 12-month hearing.<sup>4</sup> (§ 366.21, subd. (g)(1).) As noted above, however, the court found there was *not* a substantial probability of return within the extended period. Mother's contention essentially challenges this finding.<sup>5</sup>

Thus, the question properly before us is not so much whether the evidence presented—in this instance the social worker's concession—would have supported a finding that there *was* a substantial probability the children would be returned to Mother within the maximum 18-month period. We consider only whether substantial evidence supports the finding the court *did* make, which was that there was *not* such a substantial probability. (See *In re Sarah F.* (1987) 191 Cal.App.3d 398, 405.) In making this

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<sup>4</sup> The maximum period for extended services ends 18 months after the date the minor was originally removed from the parent's physical custody, which in this case was October 7, 2008. (§ 366.21, subd. (g)(1).)

<sup>5</sup> We note the juvenile court was also authorized to extend services beyond the 12-month hearing if it found that Mother did not receive reasonable services. (§ 366.21, subd. (g)(1).) Mother's contention, however, does not rest on a failure to provide reasonable services. Rather, it supposes there was substantial probability that the minors could be returned to her and safely maintained in her home, assuming that she could "nearly complete" an inpatient alcohol treatment program within the extended period.

determination, we view the evidence in the light most favorable to the trial court, resolving conflicts and indulging all reasonable inferences in favor of the juvenile court's ruling. (*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1728.)

There is ample evidence to support the juvenile court's negative finding. The social worker's concession—that it was possible for Mother to “nearly complete” an inpatient treatment program within the extended period—was first and foremost qualified by a proviso that such a result would require “an amazing change” in Mother's behavior. There was evidence that Mother's alcohol abuse had resulted in Agency intervention beginning nine years ago, as well as evidence that her “behavior” included instances in which she had completed inpatient treatment, but had subsequently relapsed into alcohol abuse that placed her children at risk. There was, finally, evidence that Mother had performed poorly in her most recent attempts to complete an outpatient treatment program, and had admitted drinking the day before the hearing. Under these circumstances, we are satisfied that substantial evidence supports the finding that there was not a substantial probability that the minors could be returned to Mother and safely maintained in her home within the remaining period for extended services.

#### **DISPOSITION**

The request for stay is denied and the petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Banke, J.